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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,298

06/23/2006

Hiroyuki Ichiyama

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WENDEROTH, LIND & PONACK, L.L.P.

1030 15th Street, N.W.,

Suite 400 East

Washington, DC 20005-1503

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,298	Applicant(s) ICHIYAMA ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5-29-07; 8-1-06; 6-23-06</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rek as further evidenced by Firestone.

Rek discloses a blend of butter fat and palm kernel oil with improved whipping and creaming properties. The preparation of a mélange as oil in water emulsion is mentioned in claim 8 of Rek. . Fat blends containing butter fat to palm kernel fat ratios of down to 65:35 are disclosed at Table II. Evidence for the fatty acid content of the blend can be calculated from the fatty acid composition of palm kernel oil and butter fat shown in Firestone. One of ordinary skill in the art, using a blend of 65% butter fat and 35% palm kernal oil would expect the fat blend to have a fatty acid content that falls within the range of claim 1. The photo degradation resistance would have been expected from the composition of Rek. It is appreciated that the particular amount of fat and nonfat milk solids are not mentioned in Rek but non-fat milk solids are known in the art to be present in dairy

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products. To utilize the Rek fat composition in skim milk, as oil in water emulsion, would have been an obvious way to provide a whole filled milk product. To prepare pudding or bavarois or jelly using the Rek would have been obvious to the ordinary cook.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rek (4,350,715) as further evidenced by Firestone.

Rek discloses a blend of butter fat and palm kernel oil with improved whipping and creaming properties. The preparation of a mélange as oil in water emulsion is mentioned in claim 8 of Rek. . Fat blends containing butter fat to palm kernel fat ratios of down to 65:35 are disclosed at Table II. Evidence for the fatty acid content of the blend can be calculated from the fatty acid composition of palm kernel oil and butter fat shown in Firestone. One of ordinary skill in the art, using a blend of 65% butter fat and 35% palm kernal oil would

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expect the fat blend to have a fatty acid content that falls within the range of claim 1. The photo degradation resistance would have been expected from the composition of Rek.

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rek as further evidenced by Firestone as applied to claims 1, 3 and 4 above, and as further evidenced by Potter.

The claims appear to differ from Rek as further evidenced by Firestone in the recitation of “preventing photo degradation. Potter is cited for evidence that milk undergoes photooxidation when it is exposed to light. One of ordinary skill in the art would expect that a reduction in butter fat in the composition of Rek would act to reduce photo degradation in the composition. It is appreciated that prevention of photo degradation is not mentioned but Potter also teaches that packaging is also critical to the prevention of photo degradation in foods. One of ordinary skill in the art would be expected to prevent photo degradation with appropriate packaging of foods.

Claims 2, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rek as further evidenced by Firestone as applied

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to claims 1, 3, 4, 7, 9 and 10 above alone or if necessary in view of Arcadipane (5,393,551).

The claims appear to differ from Rek in the recitation of the inclusion of tocopherol. Tocopherol is well known in the art as a vitamin and as an antioxidant. It would have been obvious to fortify the fat blend of Rek to upgrade its nutritional quality. If further evidence for the inclusion of tocopherol in foods were required, one of ordinary skill in the art would only need to look to Arcadipane at Table 1, on column 10 wherein it shows fortification of milk with vitamin E or tocopherol. It would have been obvious to fortify the fat blend of Rek to upgrade its nutritional quality.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim as to how the fat composition is used. An amendment to the claims clarifying what process steps are intended would overcome the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A

Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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